

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III

SC03-1846

TRIAL BRIEF ADDRESSING
AMENDED FORMAL CHARGE III

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby files this, his Trial Brief Addressing Amended Formal Charge III, and states the following:

FACTS

1. Amended Formal Charge III contends Judge Renke knowingly and purposefully misrepresented an endorsement by Clearwater firefighters by asserting that he was “supported by our areas bravest: John with Kevin Bowler and the Clearwater firefighters.”

2. John Renke was contacted by Kevin Bowler, a Clearwater Firefighter and the steward of the union representing the Clearwater firefighters. Mr. Bowler told John Renke II and John Renke III that the firefighters were supporting the campaign of John Renke, III, and would pass out literature. Mr. Bowler called the Renke law office one day and told John Renke II that the Clearwater firefighters were at Clearwater City Hall for a hearing and asked if John Renke, III would like

to come down for a group picture with the Clearwater firefighters to be used in his brochure.

ARGUMENT

Special Counsel has the burden of proving any violations of the charged Judicial Canons by clear and convincing evidence. Florida courts define the term ‘clear and convincing evidence’ as follows:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

Amended Formal Charge III pertains to a picture and text that accurately reflect Clearwater firefighters who supported Judge Renke during his judicial campaign. The JQC argues that the picture is misleading because Judge Renke did not have the endorsement of any group representing the firefighters. To the contrary, Judge Renke did not reference any endorsement but instead merely published a picture of himself surrounded by supporters, who are employed in a profession that he admires. The JQC attempts to prove actual malice by inferring a

deceptive or misleading message into a true statement and an accurate picture. Such analysis falls well below the actual malice standard. Judge Renke never intended to mislead or deceive anyone by publishing an accurate picture with accurate text. The JQC cannot prove a “knowing misrepresentation” by clear and convincing evidence.

Further, even assuming, for the sake of argument, that this true statement and accurate picture are characterized as misleading and deceptive, the representations are protected political speech. In Weaver v. Bonner, 309 F.3d 1312, 1320 (11th Cir. 2002), the Eleventh Circuit struck down a Georgia judicial canon that prohibited “true statements that are misleading or deceptive or contain a material misrepresentation or omit a material fact.” The Florida JQC is attempting to use the same theory of prosecution as embodied in the unconstitutional Georgia canon. However, the Weaver court clearly held that judicial regulation must permit significant “breathing space” to protect political expressions. As a consequence, it is unconstitutional to sanction a judicial candidate for making accurate statements even if the statements are found to be misleading, deceptive or omit a material fact.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September, 2005, the original of the foregoing Trial Brief Addressing Amended Formal Charge III has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by hand delivery to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

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